

“HIGHLY SENSITIVE PERSONAL DATA”: CIPA Lawsuit Against Goodyear Tire Involving Chat Box Recordings Makes It Past Pleadings Stage

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Hi TCPAWorld! The Dame here. It was only a little over a month ago that I had the privilege of telling you about Active Prospect’s CIPA [win](#).

Well, now, we take a step back. Goodyear Tire lost its motion to transfer venue and motion to dismiss out in the Central District of California on February 3, 2023 in *Arisha Byars v. The Goodyear Tire and Rubber Company, et. al.*, No. 5:22-cv-01358-SSS-KKx.

This loss is a huge deal for one main reason: recording chat boxes is considered as wiretapping under CIPA by the Court here.

Plaintiff alleges two violations of CIPA: 1) §§ 631(a) and 632.7.

Let’s dive into this one by first starting with the 631(a) claim.

Section 631(a) of CIPA penalizes “three distinct and mutually independent patterns of conduct: intentional wiretapping, willfully attempting to learn the contents or meaning of a communication in transit over a wire, and attempting to use or communicate information obtained as a result of engaging in either of the previous two activities.”

Here, Plaintiff alleged that Goodyear was incepting “sensitive personal information”—not just record information which is not considered a violation (i.e. name, address, subscriber information)—in real time. And this sensitive information was alleged to be found in the website visitors’ chat conversations.

The allegation including the term “sensitive personal information” was key here and enough to show that more than “record information” was plausibly contained in these chats. The contents of the chat are not required.

This seems like a low bar and is going to open a floodgate of litigation, but that is not all.

We also have a CIPA claim under 632.7 which prohibits intentional recording of information without

all parties' consent where a party is using a cell or cordless phone.

Goodyear tried to argue that because this was on a website it did not fall within the statute, but predictably, that argument failed as this statute has already been applied to internet communications.

AGAIN, the phrase "highly sensitive personal data" pushed this past the pleadings phase. The Court said this was also enough to show that the website user had a "reasonable expectation of privacy."

Additionally, Goodyear attempted to argue that dismissal was warranted because Plaintiff failed to allege the communications occurred between two telephone devices, but the Court said there was no requirement to allege the type of telephonic device Goodyear used.

As for the denial of the transfer of venue, the Court found that the "Terms of Use" requiring Ohio to be the forum was that of a "browsewrap agreement"—meaning that the website's terms and conditions of use are available as a hyperlink at the bottom of the website. Because of this, Goodyear needed to show that Plaintiff had actual or constructive knowledge of its existence which it did not. They did not provide any argument even suggesting that she "had reason to scroll to the bottom of the page or otherwise saw the 'Terms of Use.'" As such, the Court found it unenforceable against Plaintiff here.

Now, [we previously mentioned](#) that there has been a shift in CIPA litigation away from web session recordings towards these chat box communication claims, and now, we see that it is at least making it past the pleadings stage. We can probably expect to see even more of these filed.

We will be keeping a close eye on this one!

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